

## **Checklist for Individual Whole Life Variable Insurance Products**

Insurer \_\_\_\_\_

NAIC# \_\_\_\_\_

Name of Product \_\_\_\_\_

Contact Person, Title \_\_\_\_\_

Address \_\_\_\_\_

Telephone \_\_\_\_\_ Fax \_\_\_\_\_

Date received \_\_\_\_\_ Reviewed by \_\_\_\_\_

SRB # \_\_\_\_\_

Notes:

## Contents of Actuarial Memorandum

- \_\_\_ Each submission must be accompanied by an actuarial memorandum prepared and signed by an actuary that includes the following:
  - \_\_\_ A description of the product;
  - \_\_\_ The mathematical formulas, sample numerical calculations and a detailed statement of the method used to compute policy or contract values and reserves and insurance nonforfeiture benefits;
  - \_\_\_ A statement that each form's nonforfeiture values are not less than those required by Massachusetts law OR
  - \_\_\_ A statement that no nonforfeiture values are required by Massachusetts law, and a detailed demonstration on how net premiums and/or values meet the exclusionary requirement of M.G.L. c. 175, § 144. *SRB Bulletin 90-02*
  - \_\_\_ For decreasing or level term forms, the term periods and issue ages for which such forms will be issued, and the premium rates. *SRB Bulletin 90-02*
  - \_\_\_ For indeterminate premium plans, the maximum and current premium rates. *SRB Bulletin 90-02*
  - \_\_\_ Identification of risk classes covered under the policy and how rates and values are affected. *SRB Bulletin 90-02*
- \_\_\_ Any additional data, tables, and information necessary for a comprehensive review of the forms. *SRB Bulletin 90-02*
  
- \_\_\_ The actuarial memorandum, prepared and certified by a qualified actuary, must contain a description of the company's methodology(ies) used to determine reserve liabilities for any guaranteed death benefits and other contingencies, including the mortality, expenses and other risks which the insurer will bear under the policy. *211 CMR 95.06(2)*
  
- \_\_\_ Assets in any separate account must be valued at their market value at the date as of which valued in accordance with the terms of the applicable contracts, or if there is no readily available market, then in accordance with the terms of such contracts. The life company's reserve liability for contracts on a variable basis must be in accordance with actuarial procedures which recognize the variable nature of the benefits, payments or values to be provided. *M.G.L. c. 175, § 132G, see also 211 CMR 95.10(1)*: Reserve liabilities for variable life insurance policies shall be established in accordance with the provisions of M.G.L. c. 175, §§ 9, 132F and 132G and in accordance with actuarial procedures that recognize the variable nature of the benefits provided and any mortality guarantees, including the cost of insurance charges guaranteed under the contract.

*All of the following are from 211 CMR 95.10(2):*

  - \_\_\_ Reserve liabilities for any guaranteed minimum death benefit shall be the reserve needed to provide for the contingency of death occurring when the guaranteed minimum death benefit exceeds the death benefit that would be paid in the absence of

the guarantee, and shall be maintained in the general account of the insurer and shall be not less than the greater of the following minimum reserves:

- (a) the aggregate total of the term costs, if any, covering a period of one full year from the valuation date, or, if less, covering the period provided for in the guarantee not otherwise provided for by the reserves held in the separate account, on each variable life insurance contract, assuming an immediate one-third depreciation in the current value of the assets of the separate account followed by a net investment return equal to the assumed investment rate; or
- (b) the aggregate total of the "attained age level" reserves on each variable life insurance contract. The "attained age level" reserve on each variable life insurance contract shall not be less than zero and shall equal the "residue" as described in 211 CMR 95.10(2)(b)1., of the prior year's "attained age level" reserve on the contract, with any such "residue" increased or decreased by a payment computed on an attained age basis as described in 211 CMR 95.10(2)(b)2.:
  - 1. the "residue" of the prior year's "attained age level" reserve on each variable life insurance contract shall not be less than zero and shall be determined by adding interest at the valuation interest rate to such prior year's reserve, deducting the tabular claims based on the "excess," if any, of the guaranteed minimum death benefit over the death benefit that would be payable in the absence of such guarantee, and dividing the net result by the tabular probability of survival. The "excess" referred to in the preceding sentence shall be based on the actual level of death benefits that would have been in effect during the preceding year in the absence of the guarantee, taking appropriate account of the reserve assumptions regarding the distribution of death claim payments over the year;
  - 2. the payment referred to in 211 CMR 95.10(2)(b) shall be computed so that the present value of a level payment of that amount each year over the future period for which charges for this risk will be collected under the contract is equal to (A) minus (B) minus (C), where (A) is the present value of the future guaranteed minimum death benefits, (B) is the present value of the future death benefits that would be payable in the absence of such guarantee, and (C) is any "residue," as described in 211 CMR 95.10(2)(b)1., of the prior year's "attained age level" reserve on such variable life insurance contract. If no future charges for this risk will be collected under the contract, the payment shall equal (A) minus (B) minus (C). The amounts of future death benefits referred to in (B) shall be computed assuming a net investment return of the separate account which may differ from the assumed investment rate and/or the valuation interest rate but in no event may exceed the maximum interest rate permitted for the valuation of life insurance contracts;
- (c) the valuation interest rate and mortality table used in computing the minimum reserves described in 211 CMR 95.10(2)(a) and 95.10(2)(b) shall conform to permissible standards for the valuation of life insurance contracts. In determining such minimum reserve, the company may employ suitable approximations and estimates, including but not limited to groupings and averages. *211 CMR 95.10(2) with appropriate subsections*

☐ Reserve liabilities for all fixed incidental insurance benefits and any guarantees associated with variable incidental insurance benefits must be maintained in the general account, and reserve liabilities for all variable aspects of the variable incidental insurance benefits shall be maintained in a separate account, in amounts determined in accordance with the actuarial procedures appropriate to such benefit. Reserve liabilities must be at least equal to the cash surrender value. *211 CMR 95.10(3)*

☐ Is this a scheduled premium policy?

☐ yes ☐ no

If yes, a minimum death benefit must be provided in an amount at least equal to the initial face amount of the policy so long as premiums are duly paid and subject to all other policy provision requirements of 211 CMR 95.00. Other minimum death benefit patterns are permitted so long as it is proved that they are actuarially equivalent to that specified in the preceding sentence. *211 CMR 95.07(3)*

## Cover Page

The cover page must contain:

- \_\_\_ a prominent statement, in either contrasting color or in boldface type, that the premium is flexible or fixed and that the amount or duration of the death benefit may be variable or fixed under specified conditions and may increase or decrease. *211 CMR 95.08(1)(a)*
- \_\_\_ for scheduled premium policies, a prominent statement, in either contrasting color or in boldface type, that a premium at a guaranteed rate is necessary to sustain the policy in force to policy maturity. *211 CMR 95.08(1)(b)*
- \_\_\_ a prominent statement, in either contrasting color or in boldface type, that cash values may increase or decrease in accordance with the experience of the separate account subject to any specified minimum guarantees. *211 CMR 95.08(1)(c)*
- \_\_\_ a statement describing any minimum death benefit required pursuant to 211 CMR 95.07(3) or provided in the policy. *211 CMR 95.08(1)(d)*
- \_\_\_ for flexible premium policies which do not have a guaranteed death benefit until the maturity date of the policy, a prominent statement, in either contrasting color or in boldface type, explaining that the applicant could lose his or her entire investment, depending on the performance of the fund, and that as a result there could be no death benefit absent additional payments made to keep the policy in force. *211 CMR 95.08(1)(e)*
- \_\_\_ the method for determining the amount of insurance payable at death, or a reference to the policy provision which describes the method. *211 CMR 95.08(1)(f)*
- \_\_\_ a captioned provision which provides that the policyholder may return the variable life insurance policy to the insurer or agent thereof or to the broker from whom it was purchased within ten days of receipt of the policy and receive a refund of all premium payments for such policy. *211 CMR 95.08(1)(g)*
- \_\_\_ such other items as are currently required for general account life insurance policies and which are not inconsistent with 211 CMR 95.00. *211 CMR 95.08(1)(h)*

## Definitions

Definitions used in the policy must be substantially similar to the following from 211 CMR 95.01:

- \_\_\_ Affiliate: any person directly or indirectly, controlling, controlled by, or under common control with such insurer; any person who regularly furnishes investment advice to such insurer with respect to its separate accounts for which a specific fee or commission is charged; or any director, officer, partner, or employee of any such insurer, controlling or controlled person, or person providing investment advice or any member of the immediate family of such person.
- \_\_\_ Agent: any person, corporation, partnership, or other legal entity which is licensed by the Commonwealth as a life insurance agent.
- \_\_\_ Assumed investment rate: the rate of investment return which would be required to be credited to a variable life insurance policy, after deduction of charges for taxes, investment expenses and mortality and expense guarantees, to maintain the variable death benefit equal at all times to the amount of death benefit, other than incidental insurance benefits, which would be payable under the plan of insurance if the death benefit did not vary according to the investment experience of the separate account.
- \_\_\_ Benefit base: the amount specified by the terms of the variable life insurance policy to which the net investment return is applied.
- \_\_\_ Broker: any person, corporation, partnership, or other legal entity which is licensed by the Commonwealth as a life insurance broker.
- \_\_\_ Cash surrender value: the cash value less any policy-defined surrender charge.
- \_\_\_ Cash value: the amount, specified by the terms of the variable life insurance policy, to which separately identified mortality, expense, or other charges are made.
- \_\_\_ Commissioner: the Commissioner of Insurance or his or her designee.
- \_\_\_ Control: the possession, direct or indirect, of the power to direct the management and policies of a person, whether through the ownership of voting stock, by contract other than a commercial contract for goods or non-management services, or otherwise, unless the power is the result of official position or positions with, or corporate office or offices held by, the person or persons. Control shall be presumed to exist if any person directly or indirectly owns, controls, holds with the present power to vote, or holds proxies representing more than 10% of the voting stock of any other person. Such presumption may be rebutted by a showing made to the satisfaction of the Commissioner that control does not exist in fact. The Commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.
- \_\_\_ Division: the Division of Insurance.
- \_\_\_ Flexible premium policy: any variable life insurance policy other than a scheduled premium policy.
- \_\_\_ General account: all assets of the insurer, other than assets in separate accounts established pursuant to M.G.L. c. 175, §§ 132F or 132G, or pursuant to the corresponding section of the insurance law of the state of domicile of a foreign or alien insurer, whether or not for variable life insurance.

- \_\_\_ General account life insurance policy: any life insurance policy other than a variable life insurance policy.
- \_\_\_ Incidental insurance benefit: an insurance benefit in a variable life insurance policy, other than the variable death benefit and the minimum death benefit, and includes but is not limited to accidental death and dismemberment benefits, disability benefits, guaranteed insurability options, family income, or term riders.
- \_\_\_ Minimum death benefit: the amount of the guaranteed death benefit, other than incidental insurance benefits, payable under a variable life insurance policy regardless of the investment performance of the separate account.
- \_\_\_ Net cash surrender value: the cash surrender value less any amounts outstanding as policy loans and loan interest.
- \_\_\_ Net investment return: the rate of investment return to be applied to the benefit base.
- \_\_\_ Person: an individual, a corporation, a partnership, an association, a trust, a joint stock company, a fund, an unincorporated organization, or any similar entity or combination of the foregoing acting in concert.
- \_\_\_ Policy processing day: the day on which charges authorized in the policy are deducted from the cash value.
- \_\_\_ Scheduled premium policy: any variable life insurance policy under which both the amount and timing of premium payments are fixed by the insurer.
- \_\_\_ Separate account: an account established pursuant to M.G.L. c. 175, §§ 132F or 132G, or pursuant to the corresponding section of the insurance law of the state of domicile of a foreign or alien insurer.
- \_\_\_ Variable death benefit: the amount of death benefit, other than incidental insurance benefits, payable under a variable life insurance policy, dependent on the investment performance of the separate account which the insurer would have to pay instead of any minimum death benefit.
- \_\_\_ Variable life insurance policy: any individual policy which provides for life insurance, the amount or duration of which varies according to the investment experience of any separate account or accounts established and maintained by the insurer with respect to such policy, pursuant to M.G.L. c. 175, §§ 132F or 132G, or pursuant to the corresponding section of the insurance law of the state of domicile of a foreign or alien insurer.

## General Requirements

- \_\_\_ Each submission must include a certification by a company official that each form meets the objective standards of M.G.L. c. 175 §2B. If an insurer feels that a form is exempt from chapter 175 §2B, the basis for the contention must be stated in the cover letter. The term "text" includes all printed matter except the name and address of the insurer, name or title of the policy, the brief description, if any, captions and subcaptions, and schedule pages and tables. *M.G.L. c. 175 §2B*
  - \_\_\_ The text achieves a minimum Flesch score of 50. The Flesch score for each form must be stated in the certification: a statement to the effect that the score exceeds 50 is not permitted.
  - \_\_\_ The other objective standards of Chapter 175 §2B, section 1 are met:
    - \_\_\_ It is printed, except for tables, in not less than ten point type, one point leaded.
    - \_\_\_ The style, arrangement and overall appearance of the policy give no undue prominence to any portion of the text of the policy and any endorsements or riders;
    - \_\_\_ It contains a table of contents or an alphabetical subject index;
    - \_\_\_ The width of margins and ink to paper contrast do not unreasonably interfere with the readability of the form; and
    - \_\_\_ The organization of the content of the policy and the summary of the policy is conducive to understandability of the form.

**Note: All provisions of law relative to the filing of policy forms shall also apply to all applications designed to be attached to such policy forms and when so attached to constitute a part of the contract.**

*M.G.L. c. 175 § 192*

**Note: Section 2B does not apply to a policy that is a security subject to federal jurisdiction.**

- \_\_\_ All policies must be headed by the corporate name of the company. If two or more insurers are under a common management and represent themselves to be or are customarily known as an insurance company group or similar insurance trade designation, they may, with the approval of the commissioner, head or title policies with the name of the group or similar trade designation or with the names of the individual members of the group, provided that the company assuming the insurance is specifically identified. *M.G.L. c. 175, §18*
- \_\_\_ All policies must be signed by the insurer's secretary or an assistant secretary, or in their absence by a temporary secretary, and by its president or a vice-president, or in their absence by two directors. Riders or endorsements may be signed by one of the aforesaid officers of the company. (**Note: does not apply to riders or endorsements providing special benefits under M.G.L. c. 175, § 24.**) A facsimile of the required signature is acceptable. *M.G.L. c. 175, §33*

- \_\_\_ Policy of life insurance must contain on the first page in bold letters a plain description of the policy, “so fully defining its character, including dividend periods and other peculiarities, that the holder thereof shall not be likely to mistake the nature or scope of the contract.” *M.G.L. c. 175, §129*
- \_\_\_ The commissioner may require a company to submit for her inspection copies of any policy form used by the company, which includes any rider, endorsement or application used with the policy, and copies of any circular or other advertising matter used in the commonwealth. *M.G.L. c. 175, §191*
- \_\_\_ There must be a “free look” period of at least 10 days. *M.G.L. c. 175, §187H, M.G.L. c. 176D*. In the event of replacement, the free look period must be 20 days, which must be stated in the policy or a separate written notice which is delivered with the policy. *211 CMR 34.06(1)(d)*. **Note that if the insurer uses a separate notice, the notice must be submitted with the policy for review.**
- \_\_\_ The carrier must be licensed to offer variable life products.

Compliance with *M.G.L. c. 175, § 118*:

- \_\_\_ Must state the amount of benefits payable, the manner of payment and the consideration;
- \_\_\_ Benefits cannot be contingent upon assessments upon survivors  
**Note:** extra compensation may be charged by a company to the insured for engaging in naval or military service in time of war.  
**Note:** for variable policies, compliance with *211 CMR 95.08(1)* or *132G* (“Any contract on a variable basis delivered or issued for delivery in this commonwealth shall contain a statement of the essential features of the procedure to be followed by the life company in determining the amount of variable benefits, payments or values thereunder. Any such contract, including a group contract and any certificate issued thereunder, shall state that the amount of variable benefits, payments or values thereunder may decrease or increase according to such procedure, and shall contain on its first page, in a prominent position, a statement that the benefits, payments or values thereunder are on a variable basis”) will meet the requirements of this section.

Compliance with *211 CMR 95.08(1)* and *132G*:

- \_\_\_ Any contract on a variable basis delivered or issued for delivery in this commonwealth shall contain a statement of the essential features of the procedure to be followed by the life company in determining the amount of variable benefits, payments or values thereunder. Any such contract, shall state that the amount of variable benefits, payments or values thereunder may decrease or increase according to such procedure, and shall contain on its first page, in a prominent position, a statement that the benefits, payments or values thereunder are on a variable basis.

- \_\_\_ A policy may provide for general account preliminary term insurance. For any such policy, the premium rate for such preliminary term insurance must be stated separately in the application or receipt. *211 CMR 95.07(2)*
- \_\_\_ The policy benefits must reflect the investment experience of one or more separate accounts established and maintained by the insurer. The insurer must demonstrate that the reflection of investment experience in the variable insurance policy is actuarially sound. *211 CMR 95.07(4)*
- \_\_\_ Each variable life insurance policy must be credited with the full amount of the net investment return applied to the benefit base. *211 CMR 95.07(5)*
- \_\_\_ Notwithstanding the actual reserve basis used for policies that do not meet standard underwriting requirements, the benefit base for such policies may be the same as for corresponding policies which do meet standard underwriting requirements. *211 CMR 95.07(6)*
- \_\_\_ Any changes in variable death benefits of each variable life insurance policy must be determined at least annually. *211 CMR 95.07(7)*
- \_\_\_ The cash value and cash surrender value of each variable life insurance policy must be determined at least monthly. *211 CMR 95.07(8)*
  - \_\_\_ A summary of the method of computation of cash values and other nonforfeiture benefits must be described in the policy. *211 CMR 95.07(8)*
  - \_\_\_ A complete statement of the method of computation must be filed. Such method must be in accordance with the actuarial procedures that recognize the variable nature of the policy. The method of computation must be such that, if the net investment return credited to the policy at all times from the date of issue should be equal to the assumed investment rate with premiums and benefits determined accordingly under the terms of the policy, then the resulting cash values and other nonforfeiture benefits must be at least equal to the minimum values required by M.G.L. c. 175, § 144 for a general account policy with such premiums and benefits. The assumed investment rate shall not exceed the maximum interest rate permitted under M.G.L. c. 175, § 144. If the policy does not contain an assumed investment rate, the method of computation may be any other method approved by the Commissioner. The method of computation may disregard incidental minimum guarantees as to the dollar amounts payable. Incidental minimum guarantees include, but are not to be limited to, a guarantee that the amount payable at death or maturity shall be at least equal to the amount that otherwise would have been payable if the net investment return credited to the policy at all times from the date of issue had been equal to the assumed investment rate.
- \_\_\_ The computation of values required for each variable life insurance policy may be based upon such reasonable and necessary approximations as are acceptable to the Commissioner. *211 CMR 95.07(8)*

- \_\_\_ All amounts received by the life company which are required by a contract on a variable basis to be applied to provide variable benefits, payments or values thereunder must be placed in the appropriate separate account or accounts, and, if and to the extent so provided under the applicable contracts, that portion of the assets of any such separate account equal to the reserves and other contract liabilities with respect to such account shall not be chargeable with liabilities arising out of any other business the life company may conduct. *M.G.L. c. 175, § 132G*
- \_\_\_ The income, if any, and gains or losses, realized or unrealized, on each such separate account must be credited to or charged against the amounts placed in such account without regard to the other income, gains or losses of the company. *M.G.L. c. 175, § 132G*
- \_\_\_ Amounts payable to the life company under any contract on a variable basis may, with the consent of the life company, be paid by transferring investments to the life company. *M.G.L. c. 175, § 132G*
- \_\_\_ The life company's reserve liability for contracts on a variable basis shall be in accordance with actuarial procedures which recognize the variable nature of the benefits, payments or values to be provided. *M.G.L. c. 175, § 132G*
- \_\_\_ Except as otherwise provided in clause (i) of the fourth paragraph of M.G.L. c. 175, § 132G, assets in any separate account must be valued at their market value at the date as of which valued in accordance with the terms of the applicable contracts, or if there is no readily available market, then in accordance with the terms of such contracts. *M.G.L. c. 175, § 132G*

## **Mandatory Policy Provisions**

- \_\_\_ A provision that the insured is entitled to 30 days grace within which the payment of any premium after the first year may be made, subject at the option of the company to an interest charge not in excess of 6% per year for the number of days of grace elapsing before the payment of the premium, during which grace period the policy shall continue in full force. If the policy becomes a claim during the grace period before the overdue premium or any deferred premiums of the current policy year are paid, the amount of such premiums with interest may be taken from the face of the policy in settlement. *M.G.L. c. 175, §132(1)*
  
  - \_\_\_ The policy must state that it will not terminate or lapse for nonpayment of premium until the expiration of 3 months from the due date of such premium, unless the company within not less than 10 nor more than 45 days prior to said due date, shall have mailed, postage prepaid, duly addressed to the insured at his last address shown by the company's records, or in case any other person shall have been designated to receive premium notices and written designation of the name and address of such person has been given to the company, then to that person a notice showing the amount of such premium and its due date.
    - \_\_\_ Such notice must also contain a statement as to the lapse of the policy if no payment is made as provided in the policy. If such a notice is not so sent, the premium in default may be paid at any time within said period of 3 months. The affidavit of any officer, clerk or agent of the company, or of any other person authorized to mail such notice, that the notice required by this section has been duly mailed by the company in the manner hereinbefore required, shall be prima facie evidence that such notice was duly given.
  - \_\_\_ No action shall be maintained on any policy to which this section applies and which has lapsed for nonpayment of any premium unless such action is commenced within 2 years from the due date of such premium. *M.G.L. c. 175, § 110B*
- Note, however that § 110B does not apply to:**
- \_\_\_ A policy which by its term is cancellable by the company or is renewable or continuable with its consent;
  - \_\_\_ A policy for which the premiums are payable monthly or in shorter intervals.
- 
- \_\_\_ The policy must contain a provision that states that upon the death of the insured, the proceeds payable under the policy (delivered or issued for delivery in Massachusetts and which is in force on a premium-paying basis on the date of death) must include premiums paid for any period beyond the end of the policy month in which death occurred, unless such refund of premiums is due some other person pursuant to contract provisions. *M.G.L. c. 175, § 119B*
  - \_\_\_ **But note that §119B does not apply to single premium policies.**
- 
- \_\_\_ The policy must contain a provision that states that upon the death of the insured, the proceeds payable under the policy must include the payment of interest at the rate for

proceeds left on deposit with the insurer beginning 30 days after the death of the insured and shall not be payable until receipt by the insurer of proof of the insured's death.

- \_\_\_ In the event the insurer does not pay interest on proceeds left on deposit with the insurer, the rate of interest must be 6%. *M.G.L. c. 175, § 119C*

- \_\_\_ A provision that the policy shall be incontestable after two years, except for nonpayment of premiums or violation of the conditions of the policy relating to military or naval service in time of war, and, at company's election, for the purpose of contesting claims for total and permanent disability or additional benefits in case of accidental death. *M.G.L. c. 175, §132(2)* Provided, however, that any increase in the amount of the policy's death benefits subsequent to the policy issue date, which increase occurred upon a new application or request of the owner and was subject to satisfactory proof of the insured's insurability, will be incontestable after any such increase has been in force, during the lifetime of the insured, for two years from the effective date of such increase. *211 CMR 95.08(15)*

- \_\_\_ **Note: there can be no exception for fraud.** *Protective Life v. Sullivan (1997), 682 N.E. 2nd 624, 425 Mass 615.*

- \_\_\_ A provision that the policy and application constitute the entire contract, and that no statement made by the insured or on his behalf shall be used in defense of a claim unless it is contained in a written application and that the application must be attached to the policy when issued. *M.G.L. c. 175, §132(3)* **Note: if the provision states that the application will be attached, the application form must be reviewed with the filing.** *M.G.L. c. 175, §§ 131 and 192*

- \_\_\_ A provision that if the age of the insured is misstated, the amount payable will be the amount that the premium would have purchased for the correct age. *M.G.L. c. 175, §132(4)*

- \_\_\_ If any other person's age is considered in determining the amount of any premium under a policy, the provision must apply to all such persons. *M.G.L. c. 175, §132(12)*

- \_\_\_ A provision that the policy shall participate in the surplus of the company annually, beginning no later than the end of the third policy year. *M.G.L. c. 175, §132(5)*

- \_\_\_ A provision specifying nonforfeiture benefits, together with the mortality table and interest rate used in computing them, the manner in which the existence of any paid-up additions or indebtedness to the company alters the benefits, and any method of computing the benefits not shown in the table required by *M.G.L. c. 175, § 132(8)*. *M.G.L. c. 175, §132(6)*.

- \_\_\_ Nonforfeiture benefits meet the requirements of *M.G.L. c. 175, § 144*. *See separate sheet.*

- \_\_\_ The policy must contain a provision for policy loans after the policy has been in force for three years which is not less favorable to the policyholder than the following:

- \_\_\_ the loan value available must be at least equal to 75% of the policy's cash surrender value. *211 CMR 95.08(12)(a)*
- \_\_\_ the amount borrowed must bear interest at a rate stated in or determined by the terms of the policy not to exceed the rate permitted by state insurance law. *211 CMR 95.08(12)(b)*
- \_\_\_ any indebtedness must be deducted from the proceeds payable on death. *211 CMR 95.08(12)(c)*
- \_\_\_ any indebtedness must be deducted from the cash surrender value upon surrender or in determining any nonforfeiture benefit. *211 CMR 95.08(12)(d)*
  - \_\_\_ for scheduled premium policies, whenever the indebtedness exceeds the cash surrender value, the insurer must give notice of intent to cancel the policy if the excess indebtedness is not repaid within 31 days after the date of mailing of such notice. *211 CMR 95.08(12)(e)*
  - \_\_\_ for flexible premium policies, whenever the total charges authorized by the policy that are necessary to keep the policy in force until the next following policy processing day exceed, unless otherwise provided in the policy, the net cash surrender value under the policy to pay such charges, a report must be sent to the policyholder containing the information specified by *211 CMR 95.13(1)(c)*. *211 CMR 95.08(12)(e)*
- \_\_\_ all policy loan, partial withdrawal, and partial surrender provisions must be so constructed that variable life insurance policyholders who have not exercised such provision are not disadvantaged by the exercise thereof. *211 CMR 95.08(12)(g)*
- \_\_\_ amounts paid to the policyholders upon the exercise of any policy loan, partial withdrawal, or partial surrender provision must be withdrawn from the separate account and must be returned to the separate account upon repayment except that a stock insurer may provide the amounts for policy loans from the general account. *211 CMR 95.08(12)(h)*

**Note: no policy loan provision is required if the policy is under the extended insurance nonforfeiture option *211 CMR 95.08(12)(f)***

- \_\_\_ A table showing in figures the loan values, if any, and the amounts of the cash surrender values and the paid-up nonforfeiture benefits, if any, available on the policy anniversary date for the first 20 years of the policy. *M.G.L. c. 175, §132(8)*
- \_\_\_ A provision that the company may defer the granting of any loan other than to pay premiums on policies in the company, and the payment of any cash surrender value, for 6 months from the date of the written application for the loan or 6 months from the date of the written election with surrender of the policy. *M.G.L. c. 175, §132(9)*
- \_\_\_ Are the proceeds of the policy payable in installments, or as an annuity?
  - \_\_\_ yes
  - \_\_\_ no
  - \_\_\_ If yes, there must be a table showing the amounts of installments and annuity payments. *M.G.L. c. 175, §132(10), 211 CMR 95.08(13)*.

**Note: If a policy contains a table(s) of payments with respect to 2 or more alternative annuities involving life contingencies, this provision shall not preclude an additional or supplementary optional annuity or annuities**

**involving life contingencies without such a table, or without a complete table, if the policy contains a provision that the amounts of the payments may be obtained upon application to the company at any time that such amounts are determinable under the terms of the policy. *M.G.L. c. 175, §132(10)***

- \_\_\_ A provision that the holder of a policy shall be entitled to have the policy reinstated at any time within 3 years from the date of default, unless the cash surrender value has been duly paid or the extension period has expired, upon the production of evidence of insurability satisfactory to the company and the payment of all overdue premiums and any other indebtedness to the company. The company may charge interest not to exceed 6% per year or compounded semi-annually. *M.G.L. c. 175, §132(11)*
- \_\_\_ If more than one person is insured under the policy, the evidence of insurability may be required for all such persons upon whose death a benefit may accrue or become payable under the policy. *M.G.L. c. 175, §132(12)*
- \_\_\_ Any contract on a variable basis delivered or issued for delivery in this commonwealth must contain a statement of the essential features of the procedure to be followed by the life company in determining the amount of variable benefits, payments or values thereunder. *M.G.L. c. 175, § 132G*
- \_\_\_ Any contract, including a group contract and any certificate issued thereunder, must state that the amount of variable benefits, payments or values thereunder may decrease or increase according to such procedure, and must contain on its first page, in a prominent position, a statement that the benefits, payments or values thereunder are on a variable basis. *M.G.L. c. 175, § 132G*

The policy must contain all of the following:

- \_\_\_ A complete description of all charges to be made under the policy, including front end loads, back end loads and surrender charges, containing the following information:
  - \_\_\_ All charges must be identified by their purpose, including, but not limited to identification by kind of administrative charge, cost of insurance or other charge. *211 CMR 95.08(2)(a)*
  - \_\_\_ All charges must be clearly described together in one section of the policy. *211 CMR 95.08(2)(b)*
  - \_\_\_ The description must specify guaranteed maximum charges (in dollar amounts or proportions) for each type of charge and the time period covered by such charge. *211 CMR 95.08(2)(c)*
  - \_\_\_ The maximum cost of insurance charges must be stated separately in the policy from any other charges made under the policy. *211 CMR 95.08(2)(d)*
  - \_\_\_ Premiums or charges for incidental insurance benefits must be stated separately. *211 CMR 95.08(2)(e)*
  - \_\_\_ The sources of payment for each type of charge must be clearly explained. *211 CMR 95.08(2)(f)*

- \_\_\_ A disclosure of the policyholder's risk classification. *211 CMR 95.08(3)*
- \_\_\_ A full description of the benefit base and of the method of calculation and application of any factors used to adjust variable benefits under the policy. *211 CMR 95.08(7)*
- \_\_\_ A provision designating any separate account to be used and stating with respect to each such account that:
  - \_\_\_ the assets of the separate account will be available to cover the liabilities of the general account of the insurer only to the extent that the assets of the separate account exceed the liabilities of the separate account arising under the variable life insurance policies supported by the separate account. *211 CMR 95.08(8)(a)*
  - \_\_\_ the separate account will be used only to fund variable policy benefits, and such other benefits, as applicable, flowing from a variable life insurance policy, which may be permitted by 211 CMR 95.00. *211 CMR 95.08(8)(b)*
  - \_\_\_ the assets of the separate account will be valued at least as often as any policy benefits vary but at least monthly. *211 CMR 95.08(8)(c)*
- \_\_\_ If the policy is in force and does not provide for a fixed investment option, a provision that at any time during the first 24 policy months, so long as the policy is in force, the owner may exchange the policy without evidence of insurability for a policy of permanent general account life insurance on the life of the insured for the same amount of insurance as the initial face amount of the variable life insurance policy, and on a plan of insurance specified in the policy, subject to the following requirements:
  - \_\_\_ the new policy must bear the same date of issue and the issue age as the variable life insurance policy. *211 CMR 95.08(9)(a)*
  - \_\_\_ the new policy must be issued on a substantially comparable plan of permanent insurance offered in Massachusetts by the insurer (or if not available from the insurer, by a subsidiary of the insurer, its parent or an affiliate licensed to do a life insurance business in Massachusetts) with the same date of issue of the variable life insurance policy and at the premium rates in effect on that date for the same class of risk. *211 CMR 95.08(9)(b)*
  - \_\_\_ the new policy must include such incidental insurance benefits as were included in the variable life insurance policy if such incidental insurance benefits were then available for issue with the new policy. *211 CMR 95.08(9)(c)*
  - \_\_\_ the exchange must be subject to an equitable premium or cash value adjustment that takes appropriate account of the premiums and cash values under the original and new policies. A detailed statement of the method of computing that adjustment must be filed with the Division. *211 CMR 95.08(9)(d)*
- \_\_\_ A provision that:
  - \_\_\_ if the policy is in force other than under a fixed nonforfeiture benefit or if the policy is being continued under a variable nonforfeiture benefit payment of variable death benefits in excess of any minimum death benefits, net cash surrender values, policy loans or partial withdrawals (except when used to pay premiums), or partial surrenders may be deferred for any period during which the New York Stock Exchange is closed for trading (except for normal holiday closing) or when the Securities and Exchange Commission had determined that a state of emergency exists which may make such payment impractical. *211 CMR 95.08(10)(a)*

— contain a provision that the policy will be reinstated at any time within three years from the date of default upon evidence of insurability, unless the net cash surrender value has been paid or the period of extended insurance has expired, upon the payment of any outstanding indebtedness arising subsequent to the end of the grace

period following the date of default together with the accrued interest thereon to the date of reinstatement and the payment of an amount not exceeding the greater of (a) or (b), plus (c):

- (a) all overdue premiums (other than for incidental insurance benefits) and any other indebtedness in effect at the end of the grace period following the date of default with interest at a rate stated in the policy not exceeding that permitted by law; or
- (b) 110% of the increase in cash value resulting from reinstatement;
- (c) all overdue premiums for incidental insurance benefits with interest at a rate stated in the policy not exceeding that permitted by law. *211 CMR 95.08(6)*

\_\_\_ contain a provision for nonforfeiture insurance benefits so that at least one such benefit is offered on a fixed basis from the due date of the premium in default; however, a given nonforfeiture option need not be offered on both a fixed and a variable basis. *211 CMR 95.08(11)*

\_\_\_ contain a summary of the method of computing the cash value and net cash surrender value under the policy, including a description of the basis and the interest assumption. *211 CMR 95.08(11)*

\_\_\_ Any surrender charges must be shown in a table in the policy, as well as described in the policy together with the other charges to be deducted as required by 211 CMR 95.05 and 95.08. *211 CMR 95.08(11)*

\_\_\_ The insurer may establish a reasonable minimum net cash surrender value below which any nonforfeiture insurance options will not be available, but the policyholder must have the right to receive a lump sum cash payment. *211 CMR 95.08(11)*

\_\_\_ A minimum death benefit must be provided in an amount at least equal to the initial face amount of the policy so long as premiums are duly paid and subject to all other policy provision requirements of 211 CMR 95.00. Other minimum death benefit patterns are permitted so long as it is proved that they are actuarially equivalent to that specified in the preceding sentence. *Such demonstration must be made in the actuarial memorandum. 211 CMR 95.07(3)*

\_\_\_ For scheduled premium policies which permit the insurer to adjust premiums, the policy must contain a provision stating the frequency with which premiums will be reviewed to determine whether an adjustment should be made. *211 CMR 95.08(18)*

\_\_\_ Is this a flexible premium policy?

\_\_\_ yes                      \_\_\_ no

\_\_\_ If yes, the policy must contain a provision for a grace period beginning on the policy processing day when the total charges authorized by the policy that are necessary to keep the policy in force until the next policy processing day exceed the amounts available under the policy to pay such charges in accordance with the terms of the policy. The grace period must end on a date

not less than 61 days after the mailing date of the Report to Policyholders required by 211 CMR 95.13(1)(c). The death benefit payable during the grace period will equal the death benefit in effect immediately prior to such period less any overdue charges. If the policy processing days occur monthly, the insurer may require the payment of not more than three times the charges which were due on the policy processing day on which the amounts available under the policy were insufficient to pay all charges authorized by the policy that are necessary to keep such policy in force until the next policy processing day. *211 CMR 95.08(5)*

### *Disclosures*

- \_\_\_ The insurer must clearly disclose in writing, at the time of solicitation or contemporaneously with delivery of the policy, all charges that may be made against the separate account. *211 CMR 95.05(1)*
  - \_\_\_ The insurer may deduct only the following from the separate account:
    - \_\_\_ taxes or reserves for taxes attributable to investment gains and income of the separate account as required by applicable state or federal law. *211 CMR 95.05(2)(a)*
    - \_\_\_ actual cost of reasonable brokerage fees and similar reasonable direct acquisition and sales costs incurred in the purchase or sale of separate account assets. *211 CMR 95.05(2)(b)*
    - \_\_\_ actuarially determined mortality costs of insurance (tabular costs) and the release of separate account liabilities. *211 CMR 95.05(2)(c)*
    - \_\_\_ reasonable charges for administrative expenses and investment management expenses, including internal costs attributable to the investment management of assets of the separate account. *211 CMR 95.05(2)(d)*
    - \_\_\_ a reasonable charge, at a rate specified in the policy, for mortality and expense guarantees. *211 CMR 95.05(2)(e)*
    - \_\_\_ any amounts in excess of those required to be held in the separate account. *211 CMR 95.05(2)(f)*
    - \_\_\_ charges for incidental insurance benefits. *211 CMR 95.05(2)(g)*
    - \_\_\_ any other type of charge that the Commissioner has determined to be fair and reasonable. *211 CMR 95.05(2)(h)*
  - \_\_\_ The description of charges made against the separate account must contain the following information:
    - \_\_\_ all charges must be identified by their purpose, including, but not limited to, identification by kind of administrative charge, investment management charge, cost of insurance or other charge. *211 CMR 95.05(3)(a)*
    - \_\_\_ all charges must be clearly described together. *211 CMR 95.05(3)(b)*
    - \_\_\_ the description must specify guaranteed maximum charges (in dollar amounts or proportions) for each type of charge and the time period covered by the charge. *211 CMR 95.05(3)(c)*
  - \_\_\_ The application materials or the policy must contain a provision that advises policyholders that the insurer will provide the following reports:
    - \_\_\_ Within 60 days after each anniversary of the policy, a report of the cash surrender value, cash value, death benefit, any partial withdrawal, partial surrender or policy loan, any interest charge, and any optional payments allowed pursuant to *211 CMR 95.08* under the policy, computed as of the policy anniversary date; note, however, that this statement may be furnished within 30 days after a specified date in each policy year so long as the information contained therein is computed as of a date of not more than 60 days prior to the mailing of such notice. *211 CMR 95.13(1)(a)*
- For all variable life insurance products:
- \_\_\_ The policyholder must be advised that the report will state that in accordance with the investment experience of the separate account, the cash values and

the variable death benefit may increase or decrease, and will prominently identify any value described therein which may be recomputed prior to the next statement required by this subsection. If the policy guarantees that the variable death benefit on the next policy anniversary date will not be less than the variable death benefit specified in such statement the statement will be modified to so indicate. *211 CMR 95.13(1)(a)1.*

For flexible premium policies:

- The policyholder must be advised that the report will contain a reconciliation of the change since the previous report in cash value and cash surrender value, if different, because of payments made (less deductions for expense charges), withdrawals, investment experience, insurance charges and any other charges made against the cash value. Reports for flexible premium policies must also show the projected cash value and cash surrender value, if different, as of one year from the end of the period covered by the report assuming that:
  - a. planned periodic premiums, if any, are paid as scheduled;
  - b. guaranteed costs of insurance are deducted; and
  - c. the net return is equal to the guaranteed rate or, in the absence of a guaranteed rate, is not greater than zero. If the projected value is less than zero, a warning message will be included that states that the policy may be in danger of terminating without value in the next 12 months unless additional premium is paid. *211 CMR 95.13(1)(a)2.*
- An annual report that includes the following:
  - 1. a summary of the financial statement of each separate account, based on the annual statement last filed with the Commissioner;
  - 2. the net investment return of the separate account for the last year and, for each year after the first, a comparison of the investment rate of the separate account during the last year with the investment rate during prior years, up to a total of not less than five years when available;
  - 3. a list of investments held by the separate account as of a date not earlier than the end of the last year for which an annual statement was filed with the Commissioner;
  - 4. all annual charges, each of the items expressed as a dollar amount or as an annual percentage, levied against the separate account during the previous year;
  - 5. a statement of any change, since the last report, in the investment objectives of the separate account, in any investment restriction or material quantitative or qualitative investment requirement applicable to the separate account, or in the investment adviser of the separate account; and
  - 6. such further information as the Commissioner may require. *211 CMR 95.13(1)(b)*
- For flexible premium policies, if the amounts available under the policy on any policy processing day to pay the charges authorized by the policy are less than the amount necessary to keep the policy in force until the next following policy processing day, a report indicating the minimum payment required under the terms of the policy to keep it in force and the length of the grace period for payment of such amount. The report must be mailed no later than and within 30

- days after the policy processing day on which the insurer determined that an insufficiency had occurred. *211 CMR 95.13(1)(c)*
- Such additional reports concerning the variable life insurance operations of the variable life insurance separate accounts as the Commissioner shall deem appropriate. *211 CMR 95.13(1)(d)*

**Note:** Specimen copies of reports distributed to policyholders in accordance with 211 CMR 95.13 must be maintained by the insurer and must be available to the Commissioner upon his or her request. If any material distributed to policyholders is found to be false, misleading, deceptive, or inaccurate in any material respect, the Commissioner may require the distribution of amended material.

The filing must also contain:

- A summary explanation, intended to be given to the applicant at or before the execution of any application. *211 CMR 95.11(1)(a)*
- The explanation must, in non-technical terms, describe the principal features of the policy, including a description of the manner in which the variable benefits will reflect the investment experience of the separate account and the factors which affect such variation. Such explanation must include a notice of the provisions required by 211 CMR 95.08(1)(g) and 95.08(9). *211 CMR 95.11(1)(a)*

The summary must include:

- A prominent statement that the premium is flexible or fixed, and that the amount or duration of the death benefit may be variable or fixed under specified conditions and may increase or decrease. *211 CMR 95.11(1)(a)1.*
- For scheduled premium policies, a prominent statement that a premium at a guaranteed rate is necessary to sustain the policy in force to policy maturity. *211 CMR 95.11(1)(a)2.*
- A prominent statement that cash values may increase or decrease in accordance with the experience of the separate account (subject to any specified minimum guarantees). *211 CMR 95.11(1)(a)3.*
- A prominent statement that in the case of a variable endowment policy the amount of the endowment payable at maturity is not guaranteed but is dependent upon then cash value at maturity (subject to any specified minimum guarantees). *211 CMR 95.11(1)(a)4.*
- For flexible premium policies which do not have a guaranteed death benefit until the maturity date of the policy, a prominent statement explaining that the applicant could lose his or her entire investment, depending on the performance of the fund, and that as a result there could be no death benefit absent additional payments made to keep the policy in force. *211 CMR 95.11(1)(a)5.*
- A statement of the investment policy of the separate account including:
- a description of the investment objectives intended for the separate account and the principal types of investments intended to be made. *211 CMR 95.11(1)(b)1.*
  - a notice that a statement describing any restrictions or limitations on such investments or on the manner in which the operations of the

separate account are intended to be conducted is available upon request. *211 CMR 95.11(1)(b)2.*

- \_\_\_ A statement of the net investment return of the separate account for each of the last ten years or such lesser period as the separate account has been in existence. *211 CMR 95.11(1)(c)*
- \_\_\_ A statement of the annual charges, each of the items expressed as a dollar amount or as an annual percentage, levied against the separate account during the previous year, or to the extent to which they are ascertainable or may be reasonably estimated, of all charges which may be levied against the separate account in the coming year in comparable detail to that provided in accordance with the requirements of *211 CMR 95.05. 211 CMR 95.11(1)(d)*
- \_\_\_ A statement of all front end loads, back end loads, surrender charges and other charges which may be made under the policy in comparable detail to that provided in accordance with the requirements of *211 CMR 95.08. 211 CMR 95.11(1)(e)*
- \_\_\_ A summary of the method to be used in valuing assets held by the separate account. *211 CMR 95.11(1)(f)*
- \_\_\_ A summary of the federal income tax aspects of the policy applicable to the insured, the policyowner, and the beneficiary. *211 CMR 95.11(1)(g)*
  - \_\_\_ This summary must also include a statement to the effect that federal and state tax laws can change from time to time without notice and, as a result, the taxable consequences to the insured, policyowner or beneficiary may be altered. *211 CMR 95.11(1)(g)*
- \_\_\_ A statement describing how the actuarially determined costs of insurance (tabular costs) are charged. *211 CMR 95.11(1)(h)*
- \_\_\_ Illustrations of benefits payable under the variable life insurance contract. *211 CMR 95.11(1)(i)*
- \_\_\_ All such illustrations must be prepared by the insurer and may not include projections of past investment experience into the future or attempt predictions of future investment experience. *Note:* an insurer may, however, use hypothetical assumed rates of return to illustrate possible levels of benefits if it is made clear that such assumed rates are hypothetical only, and are not predictions of actual future performance, and as long as one of the hypothetical assumed rates is zero percent and assumes maximum guaranteed mortality and expense charges. *211 CMR 95.11(1)(i)*
- \_\_\_ At least one set of illustrations provided to the applicant must disclose all charges that would be levied against the contract, with a clear explanation of the nature and amount of those charges. *211 CMR 95.11(1)(i)*
- \_\_\_ Illustrations may not be misleading, inadequate, or incorrect. *211 CMR 95.11(1)(i)*
  - \_\_\_ Any statement that a policy will be paid up or will require no cash outlay after a given time period must be in writing, and must clearly specify in detail all assumptions on which the statement is based. *211 CMR 95.11(1)(j)*
  - \_\_\_ Any additional information concerning the variable life insurance operations or the variable life insurance separate accounts as deemed necessary by the Division. *211 CMR 95.11(1)(k)*

- \_\_\_ The insurer must obtain from each applicant a signed and dated acknowledgment of receipt for the information described above. *211 CMR 95.11(2)*
- \_\_\_ The requirements for the summary above will be deemed to have been satisfied to the extent that information required by 211 CMR 95.11(1) is delivered in either of the following forms:
  - \_\_\_ a prospectus included in a registration statement that satisfies the requirements of the Federal Securities Act of 1933 and has been declared effective by the Securities and Exchange Commission.
  - \_\_\_ if the policies are exempted from the registration requirements of the Securities Act of 1933 pursuant to section 3(a)(2) thereof, all information and reports required by the Employee Retirement Income Security Act of 1974, as amended (ERISA).
  - \_\_\_ Any disclosures not found in a prospectus or report documents must be provided to the applicant on a sticker attached to the prospectus or report or on a supplemental disclosure page. This form must be filed for approval. To the extent that an insurer relies upon the prospectus or ERISA reports to provide information required by 211 CMR 95.11(1), the insurer must file a certification by a company official as to which provisions of 211 CMR 95.11 are being complied with thereby. This filing must accompany the filing of the policy form and supplemental disclosure page or sticker. *211 CMR 95.11(3)(b)*
- \_\_\_ The above policy summary may not be false, misleading, deceptive, or inaccurate in any material respect. *211 CMR 95.11(5)*

## Prohibitions

### *General Prohibitions*

Prohibitions under M.G.L. c. 175, § 22: No policy of insurance may contain any condition, stipulation or agreement:

- \_\_\_ Depriving the courts of the commonwealth of jurisdiction of actions against the company;
  - \_\_\_ Limiting the time for commencing actions against the company to a period of less than two years from the time when the cause of action accrues;
  - \_\_\_ Making any person appointed and licensed as the company's agent the agent of the applicant, insured, policyholder or contract holder for any purpose;
  - \_\_\_ Providing that no person shall be deemed an agent of the company unless authorized by the company in writing;
  - \_\_\_ Providing that any policy or contract made in the commonwealth on lives, property or interests therein shall be governed by the laws of any other state or country.
- \_\_\_ Policies may not include a requirement that all disputes or controversies be resolved by binding arbitration. But note that any provision that says the parties *may* agree to mediation or arbitration is permissible. The prohibition is based on the requirement that applicants waive their legal rights, or the rights of beneficiaries, set forth in M.G.L. c. 93A, § 9.
- \_\_\_ Policies may not include a limitation or exclusion on the recovery of punitive damages in the event of a dispute or controversy. *Such a limitation would be inconsistent with rights granted under M.G.L. c. 93A.*
- \_\_\_ Policies that include a provision that grants the right of the company to require an autopsy must provide flexibility that recognizes the religious practices or beliefs of the policyholder or beneficiary. *M.G.L. c. 176D*

### *Anti-discrimination provisions*

- \_\_\_ No company shall refuse to issue a policy or limit the coverage normally contained therein with respect to the risk of loss solely because of the sex of the insured. *M.G.L. c. 175, § 24A*
- \_\_\_ No life company shall make or permit any distinction or discrimination in favor of individuals between insureds of the same class and equal expectation of life in the amount or payment of premiums or rates charged for policies of life or endowment insurance, or annuity or pure endowment contracts, or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of the contracts it makes. *M.G.L. c. 175, § 120*
- \_\_\_ No insurer shall refuse, for the sole reason of mental retardation, to issue a policy of individual life insurance on the life of any person residing in the commonwealth who has reached the age of three years, if there is no other insurance in force or pending

consideration on the life of such person. *M.G.L. c. 175, § 120A Note: also applies to fraternal*

- No insurer may refuse, for the sole reason of blindness, to issue a policy of individual life insurance on the life of any such person residing in the commonwealth. *M.G.L. c. 175, § 120B*
- No insurer shall cancel, refuse to issue or renew, charge any excessive rates or restrict any length of coverage or in any way practice discrimination against persons primarily because the insured person has had a suspected, alleged or confirmed exposure to the potential hazards and afflictions of DES. This includes practices and devices which are fair in form but discriminatory in practice. *M.G.L. c. 175, § 120C*
- There may be no distinction or discrimination in the amount or payment of premiums or rates charged, in the length of coverage, or in any other of the terms and conditions of a policy of life insurance based on information that the person covered has been the victim of domestic abuse. *M.G.L. c. 175, § 120D*
- No company may discriminate against persons of color in rates or benefits. *M.G.L. c. 175, § 122*

## Optional provisions

- \_\_\_ A contract on a variable basis may provide for benefits payable in fixed amounts and for values or funds guaranteed as to principal amount or stated rate of interest; provided, that to the extent that the life company's reserve liability with respect to guaranteed benefits, values or funds is maintained in any separate account, either (i) a portion of the assets of such separate account at least equal to such reserve liability shall be invested in accordance with the requirements applicable to the life company's general investment account; provided, however, that such guaranteed separate account need not comply with the requirement of paragraph 14A of section 63 to the effect that not more than one-half of the reserve of any domestic stock or mutual life company shall be invested in corporate obligations authorized under said paragraph 14A, and shall be valued and computed as provided in section 25 or (ii) the insurer shall annually prepare an actuarial opinion that, after taking into account any risk charge payable from the assets of such separate account with respect to such guarantee, the assets in such separate account make good and sufficient provision for the fixed and guaranteed obligations of the insurer under such contract, and such opinion shall be accompanied by a memorandum of the actuary providing the opinion describing the calculations made in support of such opinion and the assumptions used in the calculations. Such actuarial opinion and accompanying memorandum shall be maintained in the insurer's home office and be available for examination. *M.G.L. c. 175, § 132G*
- \_\_\_ A provision that the amount of any dividend:
  - \_\_\_ may be applied to provide paid-up amounts of additional general account or variable life insurance. *211 CMR 95.09(1)(a)*
  - \_\_\_ may be deposited in the general account at a stated minimum rate of interest allowed by the company. *211 CMR 95.09(1)(b)*
  - \_\_\_ may be applied to provide paid-up amounts of general account or variable one-year term insurance. *211 CMR 95.09(1)(c)*
  - \_\_\_ may be paid in cash. *211 CMR 95.09(1)(d)*
  - \_\_\_ may be applied in reduction of premiums. *211 CMR 95.09(1)(e)*
  - \_\_\_ may be deposited as a variable deposit in the separate account. *211 CMR 95.09(1)(f)*
- \_\_\_ A provision allowing for incidental insurance benefits (as defined in *211 CMR 95.01* and in the policy), which may be offered on a fixed or variable basis. *211 CMR 95.09(2)*
- \_\_\_ A provision allowing the policyholder to elect in writing in the policy application for the policy or thereafter an automatic premium loan on a basis not less favorable than that required of policy loans, partial withdrawals or partial surrenders, except that payment under this provision is restricted to no more than the premiums required for a period of 12 months absent separate notification to the policyholder. The provision must state that:
  - \_\_\_ the notification will be sent by certified mail. *211 CMR 95.09(3)*
  - \_\_\_ will inform the policyholder of the duration and amount of the loan. *211 CMR 95.09(3)*

- \_\_\_ will provide a mailing address and local or toll-free telephone number at which the policyholder can advise the insurer of any intention to cancel further automatic premium loans. *211 CMR 95.09(3)*
- \_\_\_ The notification will be sent to the policyholder no less frequently than annually in the event of continuing automatic premium loans, and will be mailed separately from any other notice, information or report mailed to the policyholder by the insurer. *211 CMR 95.09(3)*
- \_\_\_ An exclusion for suicide within two years of the issue date of the policy. *211 CMR 95.09(4)*
  - Note*, however, that to the extent of increased death benefits only, the policy may provide an exclusion for suicide within two years of the effective date of any increase in death benefits that results from an application or request of the owner subsequent to the policy issue date, and was subject to satisfactory proof of the insured's insurability. *211 CMR 95.09(4)*
- \_\_\_ A provision allowing the policyholder to make partial withdrawals. *211 CMR 95.09(5)*
- \_\_\_ A provision allowing the policyholder to make partial surrenders. Any such provision must:
  - \_\_\_ provide that the policyholder may request part of the net cash surrender value in which case both the variable and minimum death benefits will be reduced commensurate with the percentage of the net cash surrender value received by the policyholder and the premium for the remaining amount of insurance will also be reduced to the appropriate rates for the reduced amount of insurance. *211 CMR 95.09(6)*
  - \_\_\_ The policy may provide that a partial surrender provision will not require the insurer to reduce the amount of the minimum death benefit to less than the lowest amount of minimum death benefit which could have been issued to the insured under the insurer's rules at the time the policy was issued. *211 CMR 95.09(6)*
  - \_\_\_ The policy must clearly provide that the policyholder has the option of electing to exercise the policy loan or partial withdrawal provision rather than the partial surrender provision. *211 CMR 95.09(6)*
- \_\_\_ A provision that if at any time, so long as the policy is in force other than under a nonforfeiture benefit, the variable death benefit is less than it would have been if no loan or withdrawal had ever been made, the policyholder may increase such variable death benefit up to what it would have been if there had been no loan or withdrawal by paying an amount not exceeding 110% of the corresponding increase in cash surrender value and by furnishing such evidence of insurability as the insurer may request. *211 CMR 95.09(7)*
- \_\_\_ The policy may specify a reasonable minimum amount which may be borrowed at any time but such minimum shall not apply to any automatic premium loan provision. *211 CMR 95.09(8)*
- \_\_\_ Any other policy provision approved by the Commissioner. *211 CMR 95.09(9)*
- \_\_\_ Notwithstanding any other provision of law, any domestic life company which establishes one or more separate accounts in connection with contracts on a variable basis may provide to the holders of interests in any such separate account voting rights with respect to the management of such separate account and the investment of

assets therein, may establish for such separate account a committee, board or other body the members of which (1) may be elected solely by holders having such voting rights and (2) may or may not be otherwise affiliated with such life company, and may provide for compliance with any applicable state and federal law, in order that contracts on a variable basis may be lawfully sold or offered for sale. *M.G.L. c. 175, § 132G*

*Optional conversion, alteration, or exchange of policies or contracts*

The following provisions may in substance be included (*i.e.* the policy does not have to have these provision; however, if included, they must be substantially similar to the following):

— Any life company may, at the request of the holder, exchange, alter or convert any policy of life or endowment insurance, or annuity issued by it, or a company that is admitted and authorized under chapter 175 and is an affiliate of it, as defined in section 206, hereinafter called the original policy, for or into any policy of life or endowment insurance, hereinafter called the rewritten policy, as of the date of the most recently issued original policy or as of the current date, or as of any intermediate date, conforming with the laws in force as of the date of issue which the rewritten policy bears; provided, that:

— if the rewritten policy bears a date prior to the date of application for exchange, alteration or conversion, the amount of insurance under the rewritten policy may not exceed the greater of (a) the amount of insurance under the original policy or policies if of life or endowment insurance, or (b) the amount of insurance which the premium paid for the original policy or policies would have purchased if the rewritten policy had been originally issued as of the date of issue it bears. Nothing in section 120 shall be construed to prohibit the exchange, alteration or conversion of a policy of life or endowment insurance or annuity under this section, and sections 123 and 130 shall not apply to a rewritten policy issued under the authority of this section. Nothing in section 131 or section 132 shall be construed to prohibit making the application for the original policy, if one of life or endowment insurance, or the application for the rewritten policy issued under authority of this section, or both such applications, a part of the rewritten policy, by endorsing thereon or attaching thereto a copy of either or both such applications. Nothing in said section one hundred and thirty-two shall be construed to prohibit the incorporation, by a rider or endorsement or otherwise, in a rewritten policy issued under authority of this section and bearing a then current date or an intermediate date of a stipulation making the incontestable provision required by said section 132 operative from the date of issue of the most recently issued original policy, if one of life or endowment insurance. *M.G.L. c. 175, § 139*

*Flexible premium products*

Is this a flexible premium universal life product?

☐ yes      ☐ no

If yes,

☐ The Division would consider a carrier to be in compliance with M.G.L. c. 176D if the term "planned premium" is used to describe the concept of flexible premiums. The use of the terms "required premium" or "expected premium" or "scheduled premium" will be considered a violation of M.G.L. c. 176D.

